

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**SPRAY ON, INC.<sup>1</sup>**

**Employer**

**and**

**Case 7-RC-22435**

**LOCAL 9, INTERNATIONAL UNION OF BRICKLAYERS  
AND ALLIED CRAFTWORKERS, AFL-CIO<sup>2</sup>**

**Petitioner**

**and**

**LOCAL 67, OPERATIVE PLASTERERS' AND CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF THE  
UNITED STATES AND CANADA, AFL-CIO**

**Intervenor Local 67**

**and**

**LOCAL 16, OPERATIVE PLASTERERS' AND CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF THE  
UNITED STATES AND CANADA, AFL-CIO**

**Intervenor Local 16**

**APPEARANCES:**

John Adam, Attorney, of Southfield, Michigan, for the Petitioner.  
Eric Frankie, of Detroit, Michigan, for the Intervenor.

**DECISION AND DIRECTION OF ELECTION**

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<sup>1</sup> The name of the Employer appears as amended at the hearing. The Employer did not appear at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>3</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved herein claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer has been engaged in the fireproofing of structural steel utilized in building construction. The Petitioner seeks to represent a unit of approximately five full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 717 Creyts Road, Diamondale, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act. Intervenor Local 16 asserts that it and the Employer are parties to two Section 9(a) collective bargaining agreements effective from June 1, 2002 through May 31, 2004, which bar the instant petition. The Petitioner's contentions are three-fold: (1) there is no evidence of any signed contract between the Employer and Intervenor upon which to assert contract bar; (2) such contracts, even if signed, are an attempt to carve out very narrow geographical areas and as such cannot act as a bar; and (3) even if such contracts are found to act as a bar, they would bar an election only in the geographical areas covered by the contracts.

I find that no contract bar exists in this case because there is no signed contract between the Employer and Local 16.

Regarding the collective bargaining history between the Petitioner and Employer, the record indicates that they have a collective bargaining relationship covering work performed in Ann Arbor, Saginaw, and Mt. Pleasant. On December 15, 1997, the

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<sup>3</sup> The parties filed briefs, which were carefully considered.

Employer signed an agreement titled “Contract to Be Executed Between an Employer Who Is Not a Member of the Signatory Group Covered by this Agreement and International Union of Bricklayers and Allied Craftworkers Local Union 9, Michigan, for The Michigan Council of Employers (MCE) Agreement 1997 – 2000.” However, there is no record evidence that the Petitioner and Employer thereafter entered into a full collective bargaining agreement.

Regarding the collective bargaining history between Intervenor Local 16 and Employer, Local 16 contends that it and the Employer entered into two Section 9(a) collective bargaining agreements effective by their terms from June 1, 2000 through May 31, 2004 covering plastering work performed in the Lansing/Jackson and Flint areas<sup>4</sup>. While copies of these agreements were admitted into the record, there were no signed agreements or documents entered into evidence indicating that the Employer executed either of these agreements.<sup>5</sup> Intervenor Local 16 claims it has represented plasterers employed by the Employer in these geographical areas for about seven to eight years, since the Employer commenced its business.<sup>6</sup>

In order for an agreement to serve as a bar to an election, the Board’s well-established contract bar rules require that such agreement satisfy certain formal and substantive requirements. As set forth in the seminal case clarifying these requirements, *Appalachian Shale Products*, 121 NLRB 1160 (1958), the agreement must be signed by the parties prior to the filing of the petition that it would bar and it must contain substantial terms and conditions of employment sufficient to stabilize the parties’ bargaining relationship. *Seton Medical Center*, 317 NLRB 87(1995).

While copies of two purported Section 9(a) agreements, one between Intervenor Local 16 and the Lansing/Jackson Area Contractors and the other between Local 16 and the Flint Area Contractors, were admitted into the record, there were no signed agreements entered into evidence between Intervenor Local 16 and the Employer. Thus, I find that no contract bar exists here because there is no signed document evidencing the finalization of the parties’ negotiation process and memorializing the overall terms of their collective-bargaining agreement. *Seton Medical Center*, supra at 87.<sup>7</sup>

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<sup>4</sup> The Lansing/Jackson area covers the counties of Jackson, Clinton, Eaton and Ingham, and the northwestern portion of Livingston County, including the townships of Conway, Cohoctah, Handy, Howell, and the city of Howell. The Flint area covers the counties of Genesee and Shiawassee and the northeastern portion of Livingston County, including Deerfield, Tyrone, Osceola, and Hartland Townships.

<sup>5</sup> Although Local 16 represented at the hearing that a signature page existed and would be faxed to the Region the following Monday, no such document was ever received.

<sup>6</sup> Local 16 also represented employees employed by the Employer’s predecessor, Advance Fireproofing, which apparently went bankrupt prior to the commencement of the Employer.

<sup>7</sup> Having found there is no contract bar, I find it unnecessary to address additional arguments asserted by the Petitioner regarding the purported collective bargaining agreements.

5. Based on the foregoing reasons, and the record as a whole, I find that the following employees constitute an appropriate unit of employees for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 717 Creyts Road, Diamondale, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.<sup>8</sup>

Dated at Detroit, Michigan, this 7<sup>th</sup> day of May 2003.

(SEAL)

/s/ Joseph A. Barker  
Joseph A. Barker  
Acting Regional Director  
National Labor Relations Board  
Patrick V. McNamara Federal Building  
477 Michigan Avenue –Room 300  
Detroit, Michigan 48226

Classification

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<sup>8</sup> Although Intervenor Local 67 was served with a notice of the representation hearing because it was listed on the petition as having a representative interest in this proceeding, as Local 67 is not the current bargaining representative and as there is no showing of interest with respect to Local 67 in this case, Local 67 will not appear on the ballot.